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In re Application of	:	
GREEN, et al.	:	DECISION ON PETITIONS
Application No.: 10/517,987	:	
PCT No.: PCT/CA03/00934	:	UNDER 37 CFR 1.137(b)
Int. Filing Date: 20 June 2003	:	
Priority Date: 20 June 2002	:	AND 37 CFR 1.47(a)
Attorney Docket No.: 7865-218 MIS:jb	:	
For: COLOUR REDUCTION IN CANOLA PROTEIN	:	
ISOLATE	:	

This decision is in response to applicant's filing of 16 January 2006 in the United States Patent and Trademark Office (USPTO). The filing includes a petition under 37 CFR 1.137(b) for revival of the present application and a petition under 37 CFR 1.47(a) to accept the application without the signature of inventor Lei Xu.

### **BACKGROUND**

On 20 June 2003, applicant filed international application PCT/CA03/00934 which claimed priority to an earlier application filed 20 June 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 31 December 2003. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States was set to expire at midnight on 20 December 2004.

On 15 December 2004, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and an Application Data Sheet. An executed oath or declaration of the inventors as required by 35 U.S.C. 371 (c)(4) was not filed.

On 13 June 2005, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) advising applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date. Applicant was afforded two months to file the proper reply and advised that this time could be extended with a petition and payment of the appropriate extension of time fee.

On 16 January 2006, applicant filed the present response including the petitions under 37

CFR 1.137(b) and 37 CFR 1.47(a) considered herein.

## **DISCUSSION**

### **I. Petition Under 37 CFR 1.47(a)**

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the requisite \$200 petition fee required by 37 CFR 1.17(g); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing joint inventor; and (4) an oath or declaration executed by each of the signing joint inventors on their behalf and on behalf of the non-signing joint inventor(s). Items 1-3 above have been satisfied.

Regarding item (4) above, section 409.03(a) of the Manual of Patent Examining Practice (MPEP) states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicant filed declarations executed by three of the four inventors with the signature block of the nonsigning inventor Lei Xu left blank. Additionally, applicant included a second set of declarations signed by inventors Brent E. Green and Kevin Segall where their signature blocks were amended to show that they were executing the declaration on behalf of Lei Xu. As stated by applicant, a similar declaration executed by inventor Radka Milanova has not been filed. Because applicant submitted the declarations specifically executed on behalf of Lei Xu by two of the three joint inventors, the presumption that Radka Milanova, Brent E. Green and Kevin Segall executed the declaration on their own behalf and on behalf of Lei Xu cannot be applied to the original set of declarations. In order to proceed, applicant must submit a declaration executed by Lei Xu, thus perfecting the original set of declarations; a declaration executed by Radka Milanova on behalf of Lei Xu or a declaration executed by Brent E. Green and Kevin Segall on behalf of Radka Milanova; along with a sufficient showing that the inventor could not be located or refused to execute the declaration. Until one of said declarations is submitted, item (4) is not satisfied.

For the reasons stated above it is not possible to grant applicant's petition under 37 CFR 1.47(a) at this time.

### **II. Petition Under 37 CFR 1.137(b)**

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the

petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required). Applicant has satisfied items 2-4.

With regard to item 1, the proper response was the submission of an executed oath or declaration of the inventors which complies with 37 CFR 1.497 (a) and (b) or a grantable petition under 37 CFR 1.47. As discussed above, applicant has not submitted a compliant declaration or grantable petition under 37 CFR 1.47(a).

For the reasons stated above, the petition for revival cannot be granted at this time and the application remains abandoned.

### **CONCLUSION**

For the reasons stated above, the petitions under 37 CFR 1.137(b) and 37 CFR 1.47(a) are **DISMISSED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b) and Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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